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12 June 2013

Ms Sarah Proudfoot
General Manager, Retail Markets Branch
Australian Energy Regulator
GPO Box 520
MELBOURNE VIC 3001

By email: AERInquiry@aer.gov.au

Re: Submission on WINenergy Pty Ltd application for Electricity Retailer Authorisation

Dear Ms Proudfoot

Thank you for the opportunity to comment on the WINenergy Pty Ltd (WINenergy) application for Electricity Retailer Authorisation from the Australian Energy Regulator (AER).

The Energy and Water Ombudsman (Victoria) (EWOV) provides alternative dispute resolution services to Victorian energy and water customers by receiving, investigating and facilitating the resolution of complaints.

In principle, EWOV would like to see that all Victorians have equal access to free, informal and expeditious external dispute resolution services to help resolve concerns with their energy and water companies. Ideally, customers of Exempt Retailers should have the same access to EWOV as customers of licensed scheme participants. In practice, this will not be easy to achieve, but should always be the goal. This submission outlines how WINenergy's application may have unforeseen impacts on its embedded electricity network customers in Victoria and on EWOV's jurisdiction.

In making this submission, EWOV's comments do not specifically relate to section 90 of the *National Energy Retail Laws*¹, the Retailer Authorisation Guideline², the Notice of Final Instrument Retailer Authorisation Guideline³, nor whether Retailer Authorisation should be granted to WINenergy. Our comments are designed to highlight the potential consequential

¹<http://www.legislation.sa.gov.au/LZ/C/A/NATIONAL%20ENERGY%20RETAIL%20LAW%20%28SOUTH%20AUSTRALIA%29%20ACT%202011/CURRENT/2011.6.UN.PDF>

²<http://www.aer.gov.au/sites/default/files/AER%20Retailer%20Authorisation%20Guideline%20%28July%202011%29.pdf>

³<http://www.aer.gov.au/sites/default/files/Notice%20of%20Final%20Instrument%20-%20AER%20Retailer%20Authorisation%20Guideline%20%28July%202011%29.pdf>

effects that granting Retailer Authorisation to WINenergy would have on EWOV. If approved in its current form, the application for Retailer Authorisation would have significant jurisdictional and case handling implications for EWOV as Victoria looks to transition to the *National Energy Customer Framework (NECF)*⁴.

EWOV's current jurisdiction

Currently, WINenergy (ABN: 71 112 175 710) is classified as an Exempt Retailer for its embedded electricity network operations. As such, it is not required to be a member of the EWOV scheme and therefore complaints made to us by WINenergy customers do not fall within our jurisdiction. Nevertheless, EWOV does receive enquiries and complaints about Exempt Retailers, including WINenergy. EWOV refers these cases to one or all of the following:

- Consumer Affairs Victoria
- Victorian Civil and Administrative Tribunal
- Australian Competition and Consumer Commission.

The table below outlines an increasing number of Exempt Retailer cases received by EWOV between 1 July 2008 and 31 December 2012:

Period	Number of Exempt Retailer cases
1 July 2008 to 30 June 2009	47
1 July 2009 to 30 June 2010	42
1 July 2010 to 30 June 2011	49
1 July 2011 to 30 June 2012	73
1 July 2012 to 31 December 2012	51*

* Please note that this figure is only for the first six months of 2012-13. Extrapolating this figure to 30 June 2013 would equate to approximately 102 cases.

Victorian retail licence application and exemption

WINenergy applied to the Essential Services Commission (ESC) on 16 November 2012 for an electricity retail licence to operate in Victoria⁵. The application is not yet approved. Currently, the ESC provides WINenergy with the ability to operate under a retail licence derogation in Victoria, which exempts it from the obligations of participating in an approved external dispute resolution (EDR) scheme, among other provisions. This means that EWOV has not had to handle cases about a hybrid electricity retailer/distributor, in the form of an embedded network operator, before.

⁴ <http://www.esc.vic.gov.au/Energy/Harmonisation-of-Energy-Retail-Codes-and-Guideline>

⁵ <http://www.esc.vic.gov.au/getattachment/3be6f0dd-d985-4de9-8165-f356c812522e/WINenergy-Retail-Pty-Ltd.pdf>

The following statements are based on the assumption that Victoria transitions to the NECF. The ESC's current project to align Victoria's *Energy Retail Code* with that of the National Energy Retail Laws and National Energy Retail Rules under the NECF⁶ indicates that this move is imminent and would therefore have an impact on EWOV in the future.

WINenergy's application to the AER

In its current form, WINenergy's application will have jurisdictional impacts on EWOV as it indicates that WINenergy plans to operate its retail electricity business and its embedded electricity network business under the same company name and ABN (WINenergy Pty Ltd, ABN: 71 112 175 710)⁷. Consequently, the retail elements of its embedded electricity network business in Victoria will fall within EWOV's jurisdiction once it is required to join an EDR scheme.

Impacts on EWOV

WINenergy's website states that it operates approximately 140 embedded network sites across Australia and has about 15,000 embedded network customers⁸, mainly concentrated in Victoria. Therefore, if the Retailer Authorisation were approved in its current form, thousands of embedded network customers would have access to EWOV. This extension of EWOV's jurisdiction, by virtue of the Retailer Authorisation for WINenergy, would include the ability for these embedded network customers to raise enquiries and complaints about the retail billing of their embedded network electricity account and other retail-related issues within EWOV's jurisdiction⁹.

Initially, the expansion of EWOV's jurisdiction to include WINenergy embedded network customers would pose a number of operational challenges, including the blurring of retail and distribution issues, relationships with third parties, and confusion about which functions of the business were involved, and in what capacity. Currently, there are no energy scheme participants that operate both retail electricity sales and the distribution of electricity, or involve billing on behalf of a third party, under one company name. The current *Electricity Industry Guideline No. 17 – Electricity Ring Fencing rules*¹⁰ in Victoria prevent a situation of vertical market power in the competitive areas of the electricity industry. Importantly, EWOV is also concerned about the complexity this creates for WINenergy customers.

⁶ <http://www.esc.vic.gov.au/getattachment/6e7f7cd5-64a1-46c3-a8f7-467124b3a0f9/Consultation-Paper-Harmonisation-of-Energy-Retail.pdf>

⁷ ASIC company name search on 3 June 2013:

https://connectonline.asic.gov.au/RegistrySearch/faces/landing/SearchRegisters.jspx?_adf.ctrl-state=4sm2oigxi_19

⁸ Information obtained from WINenergy's website: <https://www.winenergy.com.au/about/about>

⁹ EWOV case issues are defined on our website: <http://www.ewov.com.au/complaints/process-for-complaints/cases,-enquiries,-complaints/issue-categories>

¹⁰ <http://www.esc.vic.gov.au/getattachment/28c6d1ae-61e2-4882-aa71-9b82eae15db0/Guideline-Ring-Fencing-2004.pdf>

The operational challenges presented by the expansion of EWOV's jurisdiction to deal with embedded network customers should not prevent free, informal and expeditious dispute resolution being available.

We trust the above comments are helpful. Should you require further information or have any queries, please contact Chris Stuart-Walker, Research and Communications Officer, on (03) 8672 4252 or at Chris.Stuart-Walker@ewov.com.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Cynthia Gebert', followed by a long horizontal flourish.

Cynthia Gebert
Energy and Water Ombudsman (Victoria)